City of Lafayette Staff Report

To: City Council

From: Mike Moran, Associate Engineer

Date Written: October 2, 2008

Meeting Date: October 14, 2008

Subject: 3153 Indian Way – Request for 3-Foot Pickett Fence, Brick Pillar Mailbox, Landscaping and Irrigation that Encroach into the Public Right-of-Way

---

Introduction

Alan and Julie Ikeya own the property at 3153 Indian Way. The Ikeyas are requesting permission to construct a 3-foot high white pickett fence, construct a brick pillar mailbox, and supplement their existing landscaping and irrigation. These additions will require an encroachment agreement because they will be placed in the public right of way. Staff recommends approval of the agreement.

Discussion

The property is located at the southwest corner of the intersection of Silverado Drive and Indian Way. The City's right-of-way along the subject property is approximately 14 feet behind the existing concrete curb on Indian Way and is approximately 20 feet behind the concrete curb on Silverado Drive. The attached plan (Figure 1) shows the location of the proposed fence, the approximate right of way line, and the existing concrete curb. Figure 1 also shows the location of the proposed brick pillar mailbox. Figure 2 shows dimensioned details for the fence and the brick pillar mailbox.

Per staff's discussion with Mr. Ikeya, the fence, shown on Figure 1, is proposed at 5.5 feet behind the face of curb. This is a sufficient setback to allow for a future walkway or sidewalk. Because the Ikeyas did not originally know that an encroachment agreement was required to install the fence, they started installing the fence 3 feet behind the face of the curb. Photographs of the started fence are shown on Figure 3. The Ikeya's have requested that the City allow the fence to remain at the 3-foot setback so they do not need to re-set the posts that have already been installed (see letter of request, Attachment 1). Staff does not recommend approving the fence with a 3-foot setback particularly along

the Silverado side of the home where the new fence, combined with four existing birch trees, may impede the line of sight for drivers on Indian Way turning left onto Silverado. The City paved Indian Way and Silverado Drive in 2003. At this time the City does not have further plans to widen or to install improvements along the edge of the road. However, it is desirable to have the proposed fence at least 5.5 feet behind the face of the existing curb, so that any future shoulder improvements (such as a walkway or sidewalk to this area) could be added without removing the new fence. However, the property owners understand that they are responsible for removing the encroaching improvements, including the fence, mailbox, landscaping, and irrigation, if the City deems necessary in the future. The proposed encroachment agreement which includes this removal condition is attached to this staff report (Attachment 2). Based on these considerations, staff recommends approval of these encroachments as shown on the submittal drawings.

Fiscal Impact

None

Recommendation

Approve the encroachment into the City right of way along the property of 3153 Indian Way and authorize the Mayor to execute an encroachment agreement with the applicant.

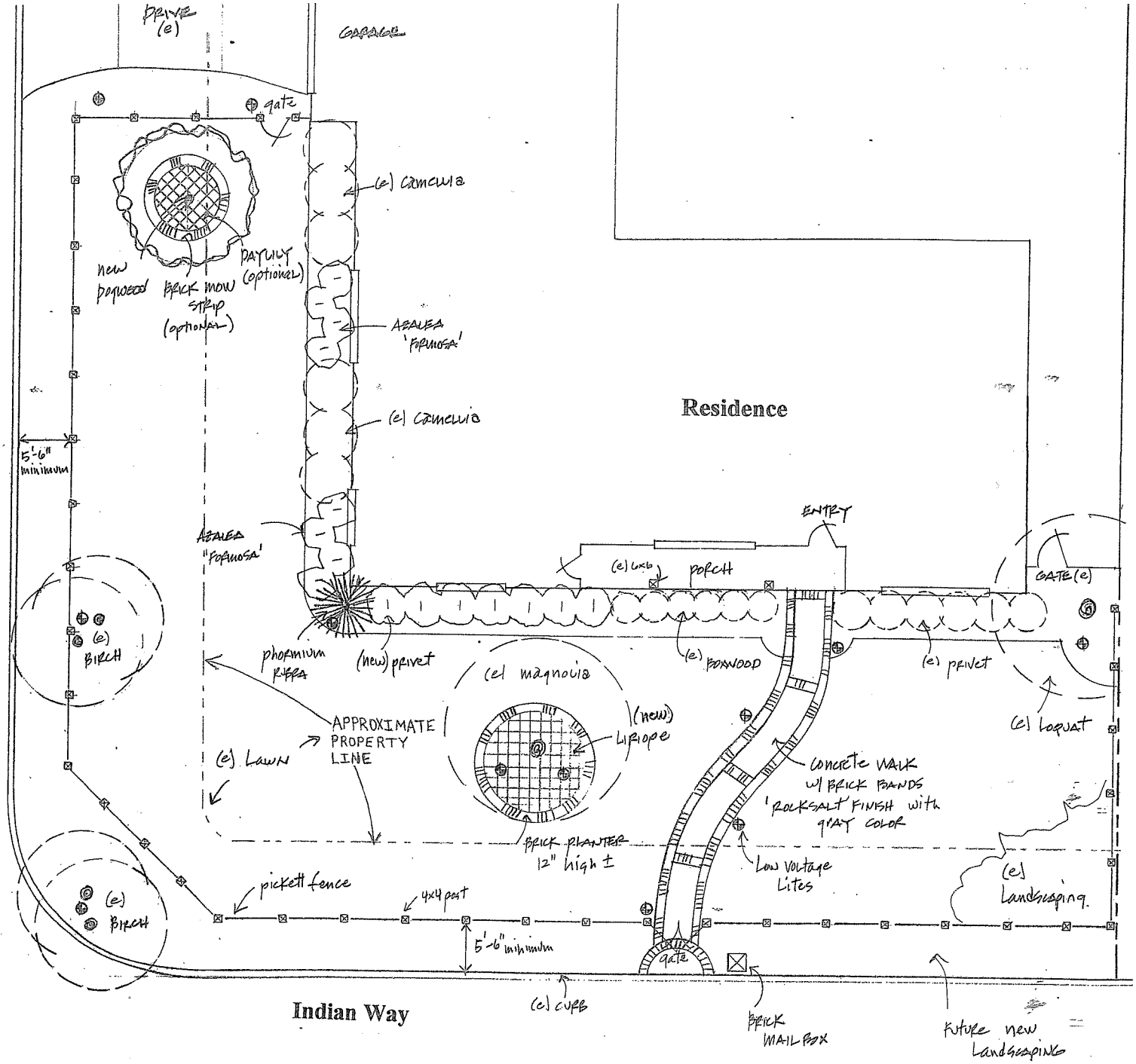
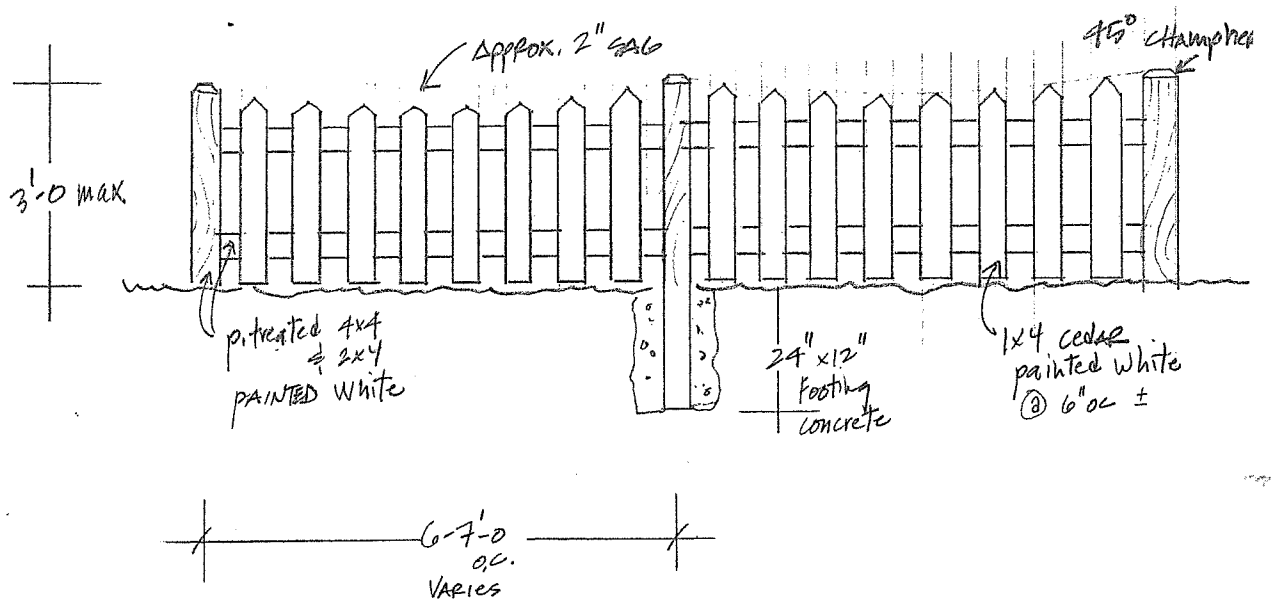

Silverado Drive
Indian Way
Residence
DRIVE (e)
GARAGE
gate
(e) camellia
new boxwood
BRICK MOW STRIP (optional)
DAYLILY (optional)
AZALEA 'FORMOSA'
(e) camellia
5'-6" minimum
AZALEA 'FORMOSA'
ENTRY
(e) BIRCH
(e) LAUR
porch
GATE (e)
phormium RUBRA
(new) privet
(e) BOXWOOD
(e) privet
(e) magnolia
(new) LIRIOPE
(e) loquat
APPROXIMATE PROPERTY LINE
(e) LAWN
CONCRETE WALK w/ BRICK BANDS 'ROCKSALT' FINISH with GRAY COLOR
BRICK PLANTER 12" high ±
Low Voltage Lites
(e) BIRCH
pickett fence
4x4 post
(e) Landscaping
5'-6" minimum
gate
(e) curb
BRICK MAIL BOX
future new Landscaping

Figure 1

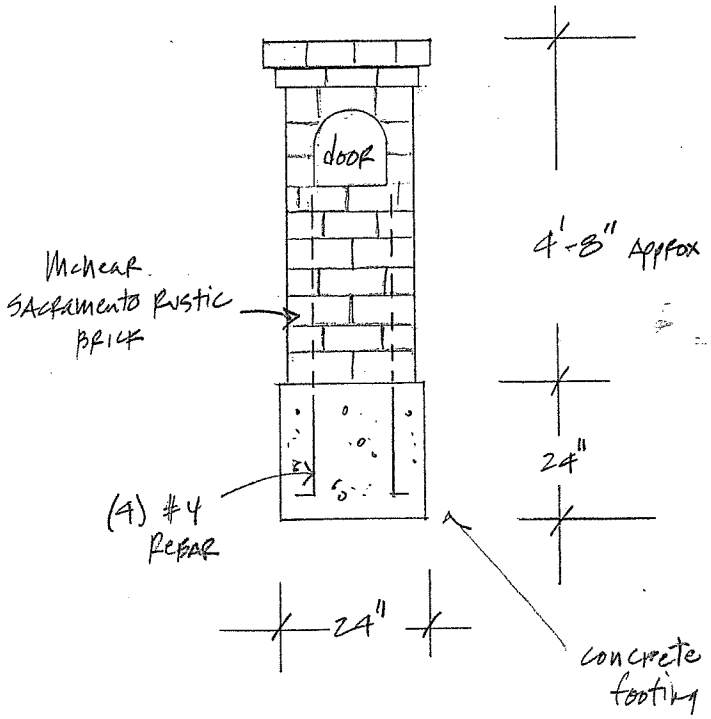
Fence Detail

Scale: ½" = 1'-0"



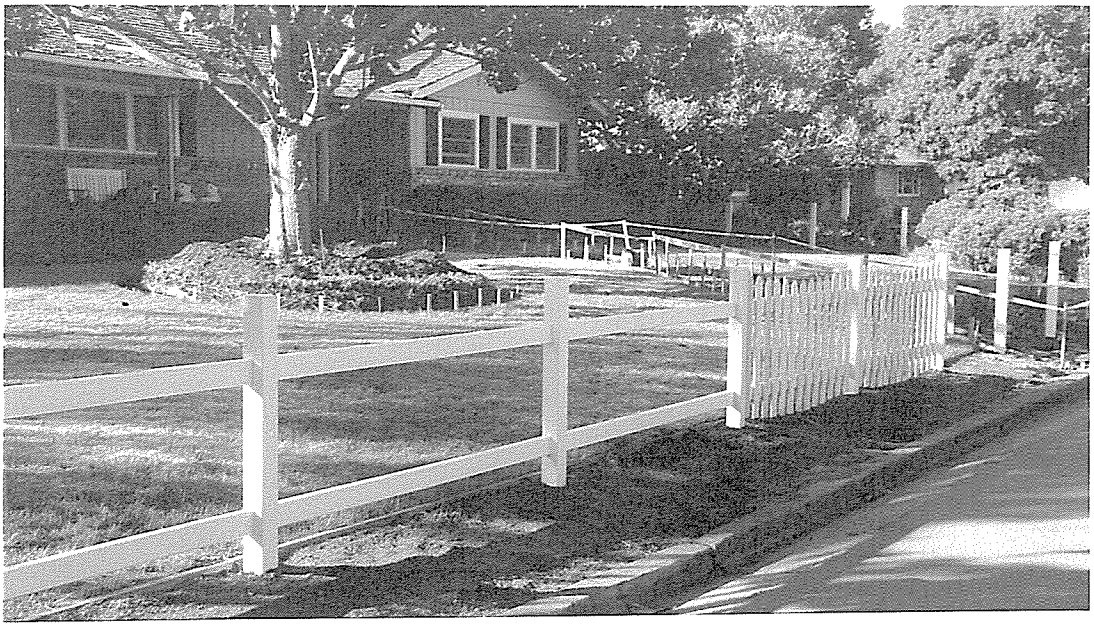
Mailbox Detail

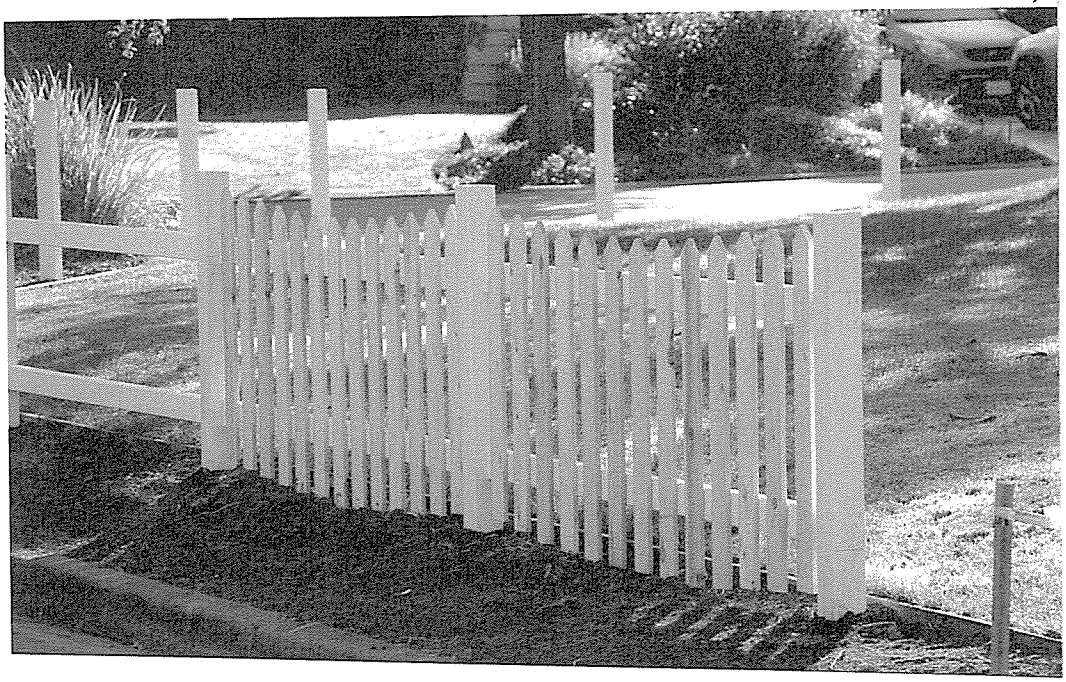
Scale: ½" = 1'-0"



NOTE: fill all cavities

Figure 2





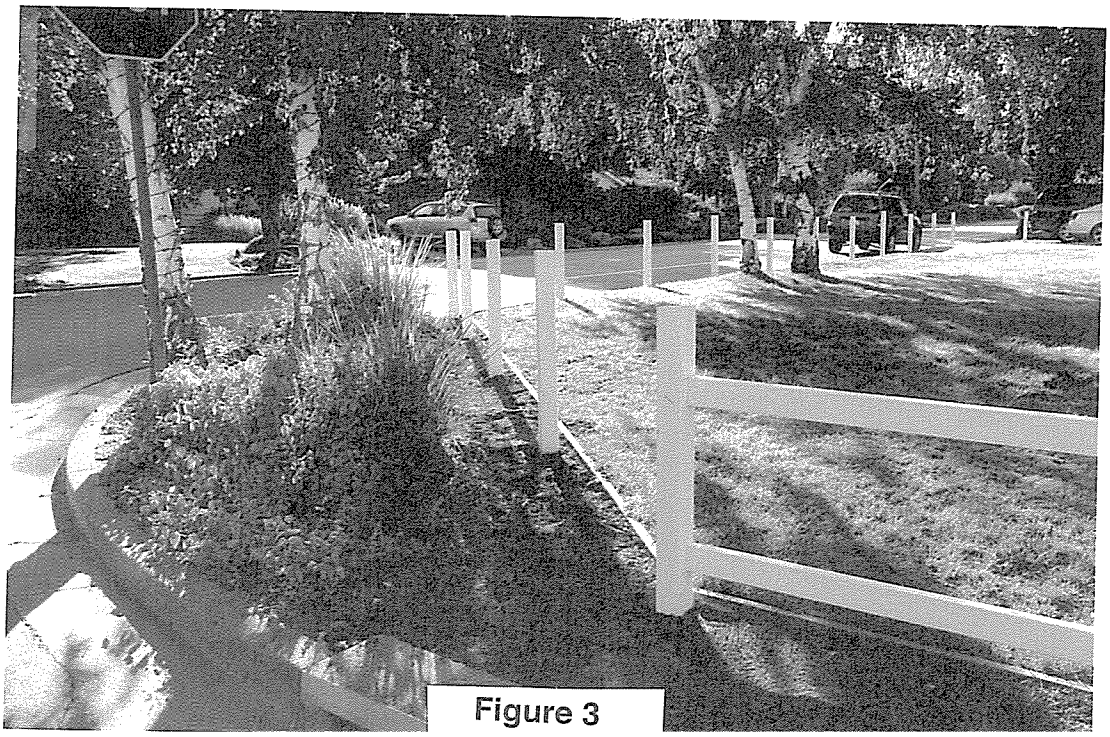


Figure 3

Attachment 1

September 19, 2008

City of Lafayette
Planning Department
3675 Mt. Diablo Blvd.
Lafayette, CA 94549

Re: Request for Encroachment Permit
Ikeya Residence – 3153 Indian Way, Lafayette

To City of Lafayette Planning Department:

Please accept my request for an encroachment permit for front yard landscaping work that we would like to perform at our residence located at 3153 Indian Way.

You will find attached:

1. Encroachment Permit Request
2. Plans developed by our landscaper, Sunrise Landscaping
3. Pictures that illustrate the current fence posts and the style of the fence we are proposing

As you are likely aware, we have entered this process because we already commenced work on the property which apparently triggered an inquiry from a Burton Valley resident. It is our intent to construct an attractive, white picket fence that will serve to enclose our property while doing so in a manner that blends well with our ranch style home. Several of these fences are located in the Burton Valley neighborhood.

Through conversation with other neighbors who have fences in place and review of a document obtained from The City via a neighbor, I was under the impression that we were required to setback the fence 3 feet from the curb and that a permit was not required. What I did not realize is that we have an encroachment line that straddles the middle of our front yard.

The attached plans push the picket fence back 5 to 6 feet from the curb, a distance that was recommended by Mike Moran in the Planning Office. Before you consider that distance our proposed plan, I would like to ask that you consider a 3 foot setback from the curb as we have already set posts and I believe that it does not present an unattractive solution (pictures attached). I understand that The City may in the future consider installing a sidewalk and that this plays into your decision making process. If you would consider my request to erect my fence 3 feet from the curb, I would be fully agreeable to removing the fence at my expense if a sidewalk were ever to be installed by the City.

I appreciate your time and consideration of my request. If any additional information is needed, please don't hesitate to contact me.

Sincerely,

Alan Ikeya

Attachment 2

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
3675 Mt. Diablo Blvd., Suite 210)
Lafayette, CA 94549)

AGREEMENT

Encroachment of a 3-foot pickett fence, a brick pillar mailbox, landscaping, and irrigation within a Public Right-of-Way along 3153 Indian Way in Lafayette, California.

This Agreement is entered into on October 14, 2008 between Alan Ikeya and the City of Lafayette, a municipal corporation "City".

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 3153 Indian Way Lafayette, California, APN 2370420024 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to construct a pickett fence, brick pillar mailbox, landscaping, and irrigation which will encroach into the public right-of-way along 3153 Indian Way. In connection with his request for an encroachment permit, Property owner has submitted plans (Figures 1 and 2) to the City for the construction and the placement of the fence, mailbox, landscaping, and irrigation.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of Fence, Brick Pillar Mailbox, Landscaping and Irrigation

Property Owner is permitted to place a fence, brick pillar mailbox, landscaping, and irrigation which substantially conforms to the plans submitted to the City described in paragraph B above, to encroach into the public right-of-way along 3153 Indian Way, subject to obtaining any building permit which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the plan without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to

by the placement, permitting or maintenance of within the right-of-way as installed and maintained by the Property Owner. Property Owner also assumes the risk of damage to the fence, brick pillar mailbox, landscaping, and irrigation installed in the right-of-way.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the fence, brick pillar mailbox, landscaping, or irrigation, permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the " taking " of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a " taking " including reasonable attorney's fees costs, alleged to have resulted from the location of the fence, brick pillar mailbox, landscaping, or irrigation within the right-of-way area by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the fence, brick pillar mailbox, landscaping, and irrigation. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give the City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain

Property Owner is responsible for maintaining the fence, brick pillar mailbox, landscaping, and irrigation described in Paragraph 1. Property Owner shall maintain the fence, brick pillar mailbox, landscaping, and irrigation in a safe and attractive condition as an encroachment within the City's right-of-way area. The fence, brick pillar mailbox, landscaping, and irrigation may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the fence, brick pillar mailbox, landscaping, or irrigation the City may give written notice of the deficiency to Property Owner who shall have 20 days to make necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the fence, brick pillar mailbox, landscaping, or irrigation, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the fence, brick pillar mailbox, landscaping, or irrigation , however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as

it considers reasonably necessary and proper to restore and maintain or remove the encroachment. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the fence, brick pillar mailbox, landscaping, or irrigation which encroaches after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the fence, brick pillar mailbox, landscaping, or irrigation. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the fence, brick pillar mailbox, landscaping, or irrigation described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Notices to Property Owner shall be addressed:

Alan Ikeya
3153 Indian Way
Lafayette, CA 94549

When the Property Owner cease to be the owners they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City it's attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the fence, brick pillar mailbox, landscaping, or irrigation .

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

_____
Steven B. Falk, City Manager

PROPERTY OWNER(S)

_____
Name of Property Owner

_____
* Notarial Acknowledgment Required.

ATTEST:

_____
Joanne Robbins, City Clerk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa }

On 10-3-08 (Date) before me, Joanne Lee Robbins notary, (Here Insert Name and Title of the Officer)

personally appeared Alan Ikeya (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JOANNE LEE ROBBINS
COMM. #1551436
Notary Public-California
CONTRA COSTA COUNTY
My Comm. Exp. Feb 10, 2009
ESI1

Place Notary Seal Above

Signature Joanne Lee Robbins
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5907 Reorder: Call Toll-Free 1-800-876-6827

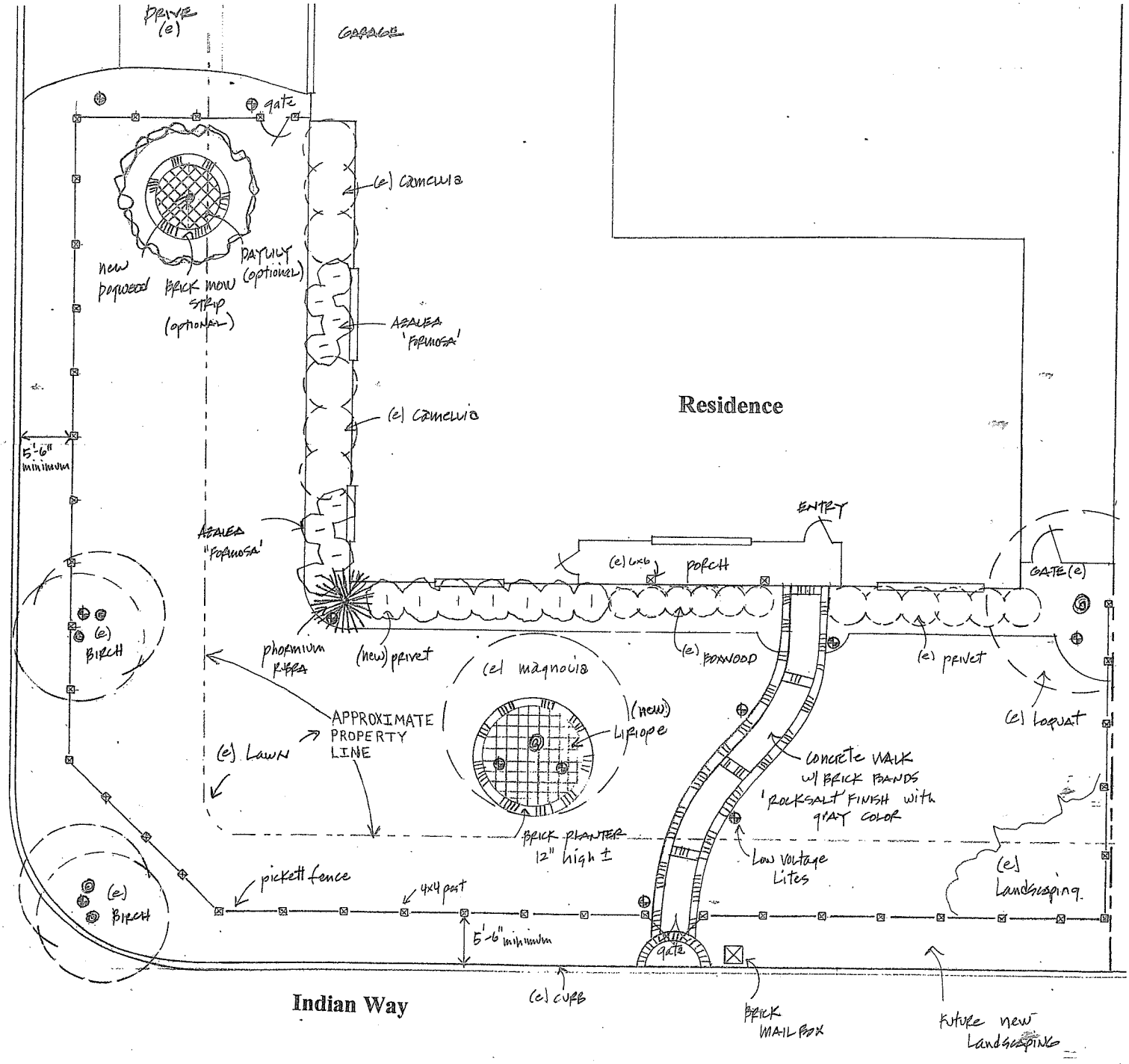
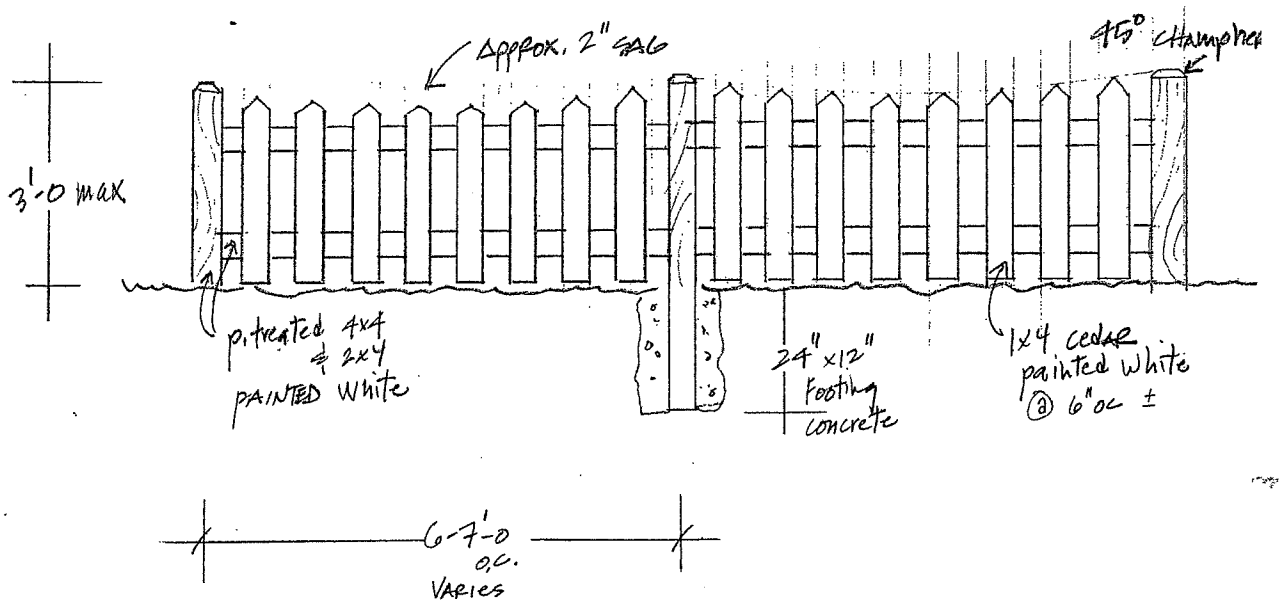

Silverado Drive
Indian Way
Residence
drive (e)
garage
gate
(e) camellia
new poqweed
brick mow strip (optional)
patchy (optional)
azalea 'formosa'
(e) camellia
5'-6" minimum
azalea 'formosa'
(e) birch
phormium rubra
(new) privet
(e) magnolia
(new) liriope
approximate property line
(e) lawn
brick planter 12" high ±
pickett fence
4x4 post
5'-6" minimum
(e) birch
(e) curb
entry
(e) 6x6 porch
(e) boxwood
(e) privet
gate (e)
(e) loquat
concrete walk w/ brick bands 'rocksalt' finish with gray color
low voltage lites
(e) landscaping
gate
brick mail box
future new landscaping

Figure 1

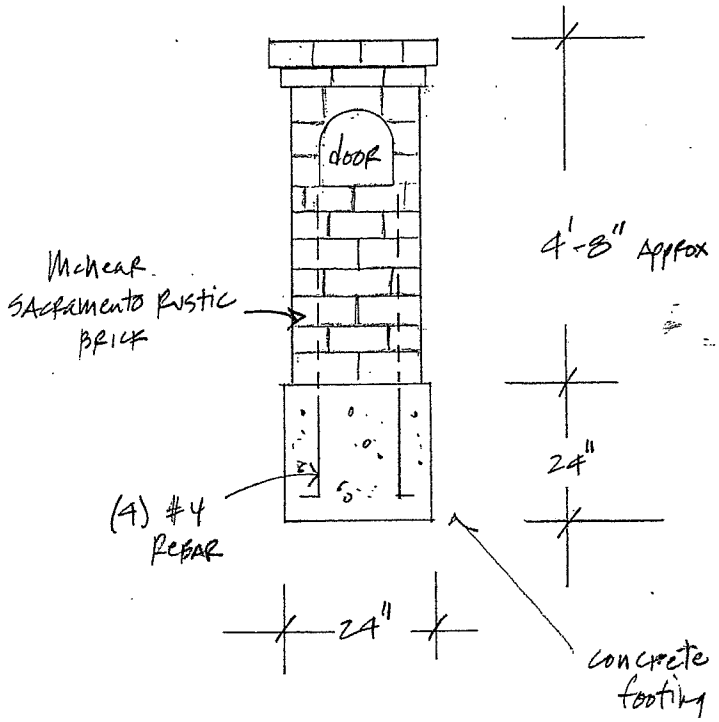
Fence Detail

Scale: ½" = 1'-0"



Mailbox Detail

Scale: ½" = 1'-0"



Note: fill all cavities ±

Figure 2

Exhibit A

Legal Description:

The land referred to in this report is situated in the State of California, County of Contra Costa and is described as follows:

CITY OF LAFAYETTE

LOT 39, MAP OF TRACT NO. 2539, FILED JUNE 13, 1958, MAP BOOK 69, PAGE 48, CONTRA COSTA COUNTY RECORDS.

ASSESSOR'S PARCEL NO. 237-042-002